

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATATREASURY CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:06-CV-72 DF
	§	
WELLS FARGO & COMPANY, et al.,	§	
	§	
Defendants.	§	

O R D E R

This case is currently in a “Phase I” trial. *See* 1/19/2010 Order, Dkt. No. 1870. The Court previously found that Plaintiff made a sufficient threshold showing under Federal Rule of Evidence (“Rule”) 801(d)(2)(D) & (E) for the Court to conditionally deny Defendants’ motion to exclude statements by various entities that have purportedly engaged in a joint enterprise with the Phase I Defendants, including Defendants that are not in Phase I. *See* 3/4/2010 Order, Dkt. No. 2004. The Court conditioned this ruling on Plaintiff showing during its case-in-chief by a preponderance of the evidence that the requirements of Rule 801(d)(2)(D) & (E) are met.

Through Plaintiff’s case-in-chief, Plaintiff has shown by a preponderance of the evidence that the required elements of Rule 801(d)(2)(D) are met, namely that: (1) an agency relationship existed; (2) certain statements at issue were made concerning a matter within the scope of the agency; and (3) the statements were made during the existence of the relationship. *U.S. v. Richards*, 204 F.3d 177, 202 (5th Cir. 2000), *overruled on other grounds, see U.S. v. Longoria*, 298 F.3d 367, 372 (5th Cir. 2002).

Plaintiff has also shown through its case-in-chief by a preponderance of the evidence that

the required elements of Rule 801(d)(2)(E) are met, namely that: (1) a joint enterprise existed; (2) certain statements at issue were made in furtherance of that joint enterprise; and (3) the party opposing admission and the co-venturer were members of that joint enterprise. *See Viazis v. Am. Ass'n of Orthodontists*, 314 F.3d 758, 767 (5th Cir. 2002).

IT IS SO ORDERED.

SIGNED this 19th day of March, 2010.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE